

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LANE MCDONOUGH,

Plaintiff,

-against-

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, PAUL DIDIO

Defendant.  
----- X

**NOTICE OF MOTION TO  
DISMISS THE COMPLAINT**

16 Civ. 4272 (LTS) (JLC)

**PLEASE TAKE NOTICE** that upon the annexed Declaration of Evan M. Piercey, dated October 14, 2016, and the exhibits annexed thereto, the accompanying Memorandum of Law in Support of Defendants’ Motion to Dismiss the Complaint, dated October 14, 2016, and upon all the papers and proceedings previously had herein, Defendants the New York City Department of Education (“DOE”) and Principal Paul DiDio (collectively, “Defendants”) will move this Court at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, 10007, before the Honorable Laura Taylor Swain, United States District Court Judge, at a time and date to be designated by the Court, for a judgment, pursuant to section 3813 of the New York State Education Law and Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the Complaint against the Defendants on the grounds that: (1) the Complaint is procedurally deficient as Plaintiff has failed to file and serve a timely notice of claim, a condition precedent to bringing suit on his New York State and New York City law claims, and (2) the Complaint otherwise fails to state a claim upon which relief can be granted.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Local Civil Rule 6.1, opposing affidavits and answering memoranda shall be served within fourteen (14) days after

service of the moving papers, and reply affidavits and memoranda of law shall be served within seven (7) days after service of the answering papers.

**CERTIFICATION.** In accordance with Magistrate Judge James L. Cott's Individual Practices, Rule 2(B)(2), on September 7, 2016, the Defendants sent Plaintiff a detailed letter outlining the legal and factual positions of an anticipated motion to dismiss. In accordance with Judge Laura Taylor Swain's September 9, 2016 order, Plaintiff filed a response to Defendants' letter on September 21, 2016. Thereafter, pursuant Judge Swain's September 9, 2016 order, the undersigned spoke with Plaintiff on September 26 and September 29, 2016 and Plaintiff indicated that he did not intend to amend his Complaint.

Dated: New York, New York  
October 14, 2016

**ZACHARY W. CARTER**  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
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By: /s/  
Evan M. Piercey  
Assistant Corporation Counsel

TO: **LANE MCDONOUGH**  
Plaintiff pro se  
29-50 167th Street  
Flushing, New York, 11358  
(By Mail and By ECF)

16 Civ. 4272 (LTS) (JLC)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LANE MCDONOUGH,

Plaintiff,

-against-

THE DEPARTMENT OF THE CITY SCHOOL  
DISTRICT OF NEW YORK, PAUL DIDIO

Defendants.

**NOTICE OF MOTION TO DISMISS THE  
COMPLAINT**

**ZACHARY W. CARTER**

*Corporation Counsel of the City of New York*

Attorney for Defendants

100 Church Street, Room 2-173

New York, New York 10007

Of Counsel: Evan M. Piercey

Telephone: (212) 356-2428

Matter No.: 2016-038275

*Due and timely service is hereby admitted.*

*Dated: New York, New York.....2016*

*Signed: .....*

*Attorney for .....*